

Dec # 092939

15

IN THE UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANDRE D. WEST,

Plaintiff,

VS

Case: 2:16-cv-12101
Judge: Cleland, Robert H.
MJ: Whalen, R. Steven
Filed: 06-08-2016 At 04:34 PM
CMP ANDRE E. WEST V LEGACY MOTORS (LG)

LEGACY MOTORS, ET AL

Defendants.

Andre West
Plaintiff, in pro per
25230 Joy Rd
Redford, Michigan 48239

COMPLAINT AND DEMAND FOR JURY TRIAL

There is no case pending in this Court
which arises out of the same
transaction or occurrence
at issue in this Complaint.

IN PRO SE STANDARD

In Puckett v Cox, it was held that a pro-se pleading requires less stringent reading than one drafted by a lawyer (456 F2d 233). Justice Black in Conley v Gibson, 355, U.S. 41 at 48 (1957). "The Federal Rules rejects the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a

proper decision on the merits.” According to Rule 8(f) FRCP and the State Court rule which holds that all pleadings shall be construed to do substantial justice.”

Pleadings in this case are being filed by plaintiff propria persona, wherein pleadings are not to be held to the same high standards of perfection as practicing lawyers. See Haines v Kremer, 404 US 519 (1972); Hulsey v Owens, 63 F3d (5th Cir 1995); Hall v Bellmon, 935 F.2d 1106 (1991).

COMPLAINT AND DEMAND FOR JURY TRIAL

Andre D. West, in pro per, and for his complaint against Defendant Legacy Motors and Credit Acceptance, submit the following:

JURISDICTION AND VENUE

Jurisdiction and venue are proper pursuant to 28 U.S.C. §§ 1331 and 1391(b).

THE PARTIES

1. That Plaintiff is a resident of the City of Redford, County of Wayne, State of Michigan.

2. That upon information and belief Defendant Legacy Motors is doing business in the State of Michigan, located at 6000 8 Mile Rd, Detroit, MI 48234.

3. That upon information and belief Defendant Mario Z is doing business in the State of Michigan located at 6000 8 Mile Rd, Detroit, MI 48234.

4. That upon information and belief Defendant Credit Acceptance is doing business in the State of Michigan

BACKGROUND FACTS

5. On June 7, 2015, Plaintiff called Legacy Motors to inquire about a 2006 Cadillac DTS, with a sales price listed as \$7,995.00.

6. After hearing the sales pitch from Mario, Plaintiff decided to go into Legacy Motors to view the 2006 Cadillac DTS, with a sales price listed as \$7,995.

7. Plaintiff went in to Legacy Motors on June 9, 2015, to view the vehicle, provide proof of income, allowed Legacy to run a credit check. However, Plaintiff did not make a down payment, make any written or verbal commitments or to purchase the 2006 Cadillac DTS.

8. Plaintiff was not sure if the vehicle was right for him, so, Plaintiff decided to go to several other car lots along 8 Mile Rd, to inquire of other vehicle with better pricing.

9. After Plaintiff was unsuccessful with his search for better pricing, Plaintiff returned to Legacy Motors on June 11, 2015, and made a \$350 partial payment towards the \$1,100.00 down payment.

10. At the time the initial partial payment was made and at the of the initial credit check, Legacy Motors did not provide plaintiff with TILA Disclosure in a written form, which Plaintiff could have kept for personal review, and Plaintiff did not sign or receive any documents.

11. On June 11, 2015 Plaintiff was told by Mario that the “vehicle comes with a warranty, the vehicle is in excellent condition, the vehicle has no issues and will last a long time”.

12. On June 13, 2015, Plaintiff paid made the final payment towards the \$1,100.00. Plaintiff and his Co –signer was rushed through the signing process on that same day.

13. Plaintiff was given TILA disclosures and other documents on June 15th, 2015, which was the day Plaintiff picked up the vehicle.

14. Plaintiff's Co-signer received her TILA disclosures by mail weeks Later from Credit Acceptance.

15. On June 15, 2015, when Plaintiff and his Co-Signer glanced through the Plaintiffs' E-signed documents in the presence of Mario, Plaintiff raised several issues to Mario regarding the now inflated price of the vehicle, the warranty Plaintiff was now responsible to pay for, although, Mario misrepresented the vehicle comes with a warranty, and the interest rate.

16. Mario's response regarding the increase in the price of the car was: "because you did not pay cash for the car, the price of the car goes up when you get a car financed". But, Plaintiff did not know how true Mario's response was.

17. Mario's response regarding the warranty was: "the warranty is a good warranty which covers the vehicle in the event something goes wrong". "You're paying for a good warranty".

18. Confused and distraught about the transaction, Plaintiff was just ready to leave Legacy Motors and hope for the best.

19. Once Plaintiff got home and further reviewed the closing documents, Plaintiff noticed the agreement was dated June 9, 2015, although Plaintiff and Co-signer signed on the same date and at the same time, which was June 13, 2015.

20. The Dealer's paper issued plate was also dated June 9, 2015, although

plaintiff received the car on the June 15, 2015.

21. After receiving the vehicle on June 15, 2015, on or around June 20, 2015, the check engine light appeared on the dashboard and the automatic starter stopped working. Plaintiff also noticed red transmission fluid in the driveway.

22. On or around June 20, 2015. Plaintiff called Mario and informed him of the situation regarding the leaking transmission. Mario stated to Plaintiff that: “the automatic starter is tied in with the computer system and when something is wrong with the car, the automatic starter stops working”.

23. Regarding the red transmission fluid, Mario said that: “your vehicle is under warranty so you should go to a mechanic that deals with warranty issues”.

COUNT I **VIOLATIONS OF TILA**

24. TILA requires that creditors, such as Legacy Motors, provide Plaintiff the required disclosures "before the credit is extended." 15 U.S.C. § 1638(b).

25. Regulation Z provides that "[t]he creditor shall make disclosures before consummation of the transaction." 12 C.F.R. § 226.17(b). "Consummation" is defined as the time "the consumer becomes contractually obligated on a credit

transaction." 12 C.F.R. § 226.2(a) (13).

26. Regulation Z also provides the manner in which disclosures shall be made. In closed-end credit transactions, "[t]he creditor shall make the disclosures ... clearly and conspicuously in writing, in a form that the consumer may keep." 12 C.F.R. § 226.17(a) (1).

27. The date of consummation in plaintiffs' credit transactions is the date on which Plaintiff signed the contract and thereby became contractually obligated to pay. *See* 12 C.F.R. § 226.2(a) (13).

28. The date Plaintiff signed the agreement was June 13, 2015. However, the agreement was backdated to show a signing date of June 9th, 2015.

29. Defendant Legacy Motors failed to comply with Regulation Z because, Legacy Motors never showed written TILA disclosures to plaintiffs prior to the signing, and it failed to provide those disclosures "in a form that Plaintiff may keep" prior to or immediately after plaintiffs became contractually obligated to pay. 12 C.F.R. § 226.17(a) (1), (b).

30. Plaintiff never signed the agreement on June 9, 2015, as alleged

within the Agreement.

31. In addition, as provided under TILA regulation, Legacy Motors failed to (1) accurately disclose the applicable finance charge before consummation, (3) accurately disclose and itemize the amount financed before consummation , (4) failed to disclose the applicable APR before consummation, (5) and failed to disclose that the price of the vehicle would be inflated before consummation.

COUNT III
FRAUD

32. On June 9-13, 2015, Mario Z falsely alleged that the vehicle comes with a warranty. However, the vehicle did not come with a warranty.

33. Plaintiff was unknowingly made to purchase a warranty in the amount of \$2000.00 plus. All of which was disclosed to Plaintiff after he received the disclosures and overview the signed disclosures /agreement.

34. On June 13, 2015, Mario Z falsely increased the price of the vehicle in finance documents from \$7,995.00 to \$10,995, as a result of plaintiff obtaining financing verses paying cash.

35. On June 9-13, 2015, Mario misrepresented the condition of the

vehicle, causing Plaintiff to enter into an agreement that he would not have entered into had he received full and truthful disclosure concerning the condition of the vehicle.

36. Mario inflated the price of the vehicle because Plaintiff was not paying cash for the vehicle and Plaintiff was made to pay the taxes on the inflated.

37. Plaintiff has been harmed by Legacy as a result of Plaintiff being made to pay the taxes on the inflated sales price. Hiding the negative equity is fraud.

COUNT IV
VIOLATIONS OF MCL 445.903

38. Defendant Legacy Motors violated MCL 445.903, Sec. 3. (1) (e),(n), and (o).

39. On June 9-13, 2015 Defendant Legacy Motors and/ or Mario Z violated MCL 445.903, Sec 3, (1) (e) in representing that the goods (2006 Cadillac DTS) is of a particular standard and /or quality (Good or Excellent condition), which caused Plaintiff to enter into the agreement.

40. Defendant Legacy Motors violated MCL 445.903, Sec. 3. (1) (n) and (o) by causing confusion or misunderstanding to legal rights of plaintiff

concerning rights to recession, TILA Disclosures, Notice Requirements, Actual price of vehicle, obligations, vehicle warranty, terms or conditions of credit extended, and/or remedies.

COUNT V
UNCONSCIONABLE ARBITRATION CLAUSE UNDER MCL440.2302

41. Defendant Credit Acceptance is enforcing arbitration clause provisions within the agreement which were procedurally and substantively unconscionable at the time of execution of the agreement .

42. Defendant Credit Acceptance is enforcing substantively unconscionable arbitration provisions as a result of:

- (a): The actual price of the vehicle being inflated from \$7,995.00 to \$10,995.00, once Legacy Motors and/or Mario Z learned that Plaintiff wanted to obtain financing verses paying cash.
- (b): The overall cost of the vehicle was unreasonable in light of the actual condition of the vehicle, and bluebook value.
- (c): Plaintiff was unknowingly made to purchase a unusable warranty which did not cover any of the problems that needed to be fixed on the vehicle.
- (d): The purchase date listed within the agreement is not the same date Plaintiff signed the actual agreement, causing the payment due date not to coincide and/or match with the date of signing.

- (e): Plaintiff made to pay taxes on the inflated overall price of the vehicle.
- (f): The contractual term were so one-sided as to oppress or unfairly surprise of Plaintiff.
- (g): Plaintiff sought financing of a vehicle for secure reliable transportation. Instead, Plaintiff is made to pay for transmission fluid weekly so that the transmission does not completely go out.
- (h): All of the terms and conditions of the agreement, warranty, actual condition of the vehicle, and actual price of the vehicle was learned after signing the agreement and taking the vehicle home.

43. Defendant Credit Acceptance is enforcing procedurally unconscionable arbitration provisions as a result of:

- (a) at the time of signing of the agreement Plaintiff was hurried to sign and had no reasonable opportunity to review all of the agreement prior to signing.
- (b) Plaintiff receiving TILA disclosures days after consummation of the agreement.
- (c) Plaintiff not being fully advised or informed of the total cost of the vehicle and/or interest rates, and warranty.

44. Credit Acceptance is enforcing an unconscionable agreement and/or arbitration clause of the agreement, developed by Legacy Motors, to enforce penalties, repossession, and default provisions.

45. Plaintiff request this honorable court to invalidate the arbitration

Clause of the agreement

RELIEF SOUGHT

WHEREFORE, Plaintiff reserves the right to amend the complaint once Full details are gathered and Plaintiff demands judgment against all Defendants for actual, special, compensatory and punitive damages, costs, expenses, and interest in an amount not less than \$70,000.00 (Seventy Thousand Dollars).

Date: _____

Andre West

44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Anche West(b) County of Residence of First Listed Plaintiff Wayne

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

Legacy motorsCounty of Residence of First Listed Defendant Wayne

Case: 2:16-cv-12101

Judge: Cleland, Robert H.

A MJ: Whalen, R. Steven

Filed: 06-08-2016 At 04:34 PM

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTY

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES | |
|---|--|---|---|---|--|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice | PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input checked="" type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education | PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement | | | |

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

VI. CAUSE OF ACTION

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE X SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

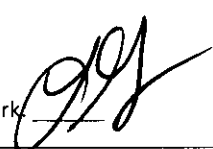
Case No.: _____

Judge: _____

Notes :

New LawsUIT Check List

Instructions: Put a check mark in the box next to each appropriate entry to be sure you have all the required documents.

| | | |
|--|--|--|
| <input checked="" type="checkbox"/> | Two (2) completed Civil Cover Sheets . | Case: 2:16-cv-12101 Judge: Cleland, Robert H. MJ: Whalen, R. Steven Filed: 06-08-2016 At 04:34 PM CMP ANDRE E. WEST V LEGACY MOTORS (LG) |
| <input type="checkbox"/> | Enter the number of defendants named in your lawsuit in the blank below, add 2 and then enter the total in the blank. <div style="display: flex; align-items: center; justify-content: center;"> <div style="text-align: center; margin-right: 10px;"> <input type="checkbox"/> <u>3</u> <small># of Defendants</small> </div> <div style="text-align: center; margin-right: 10px;"> $+ 2 =$ </div> <div style="text-align: center; margin-right: 10px;"> <u>5</u> <small>Total</small> </div> <div style="text-align: center;"> Complaints. </div> </div> Received by Clerk: _____ Addresses are complete: _____ | |
| <input type="checkbox"/> | If any of your defendants are government agencies : Provide two (2) extra copies of the complaint for the U.S. Attorney and the Attorney General. | |
| If Paying The Filing Fee: | | If Asking That The Filing Fee Be Waived: |
| <input type="checkbox"/> | Current new civil action filing fee is attached. Fees may be paid by check or money order made out to: <div style="text-align: center;">Clerk, U.S. District Court</div> Received by Clerk: _____ Receipt #: _____ | <input checked="" type="checkbox"/> Two (2) completed Application to Proceed in District Court without Prepaying Fees or Costs forms. <div style="text-align: right; font-size: 1.5em; margin-top: 20px;">  </div> Received by Clerk: _____ |
| Select the Method of Service you will employ to notify your defendants: | | |
| Service via Summons by Self | Service by U.S. Marshal <small>(Only available if fee is waived)</small> | Service via Waiver of Summons <small>(U.S. Government cannot be a defendant)</small> |
| <input checked="" type="checkbox"/> Two (2) completed summonses for each defendant including each defendant's name and address. Received by Clerk: _____ | <input type="checkbox"/> Two (2) completed USM – 285 Forms per defendant, if you are requesting the U.S. Marshal conduct service of your complaint. <input type="checkbox"/> Two (2) completed Request for Service by U.S. Marshal form. Received by Clerk: _____ | <input type="checkbox"/> You need not submit any forms regarding the Waiver of Summons to the Clerk. <u>Once your case has been filed, or the Application to Proceed without Prepaying Fees and Costs has been granted, you will need:</u> <ul style="list-style-type: none"> One (1) Notice of a Lawsuit and Request to Waive Service of a Summons form per defendant. Two (2) Waiver of the Service of Summons forms per defendant. Send these forms along with your filed complaint and a self-addressed stamped envelope to each of your defendants. |

Clerk's Office Use Only

Note any deficiencies here:

No Summons, No 285 forms, No Waiver of Summons